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Supreme Court, U.S.
FILED

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In The

SUPREME COURT OF THE UNITED STATES

♦

IN RE: HARRY W. VINSON
BRAD VINSON
Petitioners

vs.

DOROTHY COLOM; ET AL
Respondents

♦

Petition For Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit

♦

PETITION FOR WRIT OF CERTIORARI

♦

Harry W. Vinson
Brad Vinson
P. O. Box 791
New Albany, MS 38652
in propria personna

24pp

QUESTION PRESENTED

I. Does a judge's actions absent all jurisdiction invoke the Rooker Feldon Doctrine and immunity defenses. .

II. Can a judge require a litigant to get permission before petitioning the government for a grievance done to him, filing pleadings, etc., when litigant was not asking a privilege of forma pauperis and had paid all required fees, and without the opportunity of fair notice of the requirement and a meaningful opportunity to respond.

III. Did the federal district court depart so greatly from established federal Rules of Civil Procedure and controlling Supreme Court of The United States in exercising its supervisory powers?

OTHER PARTIES TO THE PROCEEDING

WILLIAM (BILL) BENSON
STATE FARM FIRE AND CASUALTY Co.
FRED M. BUSH, JR.
KAY TRAPP
PHELPS DUNBAR LLP LAW FIRM

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PETITION FOR WRIT OF CERTIORARI

Petitioners Harry W. Vinson and Brad Vinson, prays that a writ of certiorari issue to review the judgment of The Federal District Court and the Fifth Circuit Court of Appeals 25 August 2000 denying petition for rehearing on civil rights violations under Title 42 USC §1983 & 1985.

———♦———

OPINIONS BELOW

IN RE: HARRY W. VINSON, BRAD VINSON vs DOROTHY COLOM, et al; No. 1:99CV098-B-D Memorandum Opinion 6 October 1999. [App. 1]

IN RE: HARRY W. VINSON, BRAD VINSON vs DOROTHY COLOM, et al; No. 99-60826 Appeal Denied 27 August 2000 [App. 7]

IN RE: HARRY W. VINSON, BRAD VINSON vs DOROTHY COLOM, et al; No. 99-60826 Rehearing Denied 25 August 2000 [App. 10]

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JURISDICTION

The per curiam opinion of the court of appeals was entered 27 July 2000 and a timely petition for rehearing was denied 25 August 2000. The petition for a writ of certiorari was filed 9 November 2000. The jurisdiction of this Court is invoked under 28 U.S.C. §12514(b1)(2); U.S.A.

Constitution Article III §2 and Rules of The Supreme Court of The United States Rule 10(a).

CONSTITUTIONAL PROVISIONS

USA Constitution Article I Section 10 ...
"impairing the obligation of contract,...."

USA Constitution Bill of Rights
AMENDMENT I ...
"Religious rights" and "to petition the government for a redress of grievance."

AMENDMENT XIV ...
"due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

STATEMENT OF THE CASE

This case involves violations of Petitioner's Constitutional Rights brought under 42 USC §1983 for violations to Petitioners under USA Constitution Article 1 Section 10, laws impairing obligation of contract; Bill of Rights Amendment I, religious rights; and Amendment XIV due process and equal protection of the law. Complaint was filed in the U.S. District Court for the Northern District of Mississippi with summons and complaint being served. Complaint was drafted pursuant to F.R.C.P. Rule 8(a) with

respondents failing to answer the averments in the complaint pursuant to F.R.C.P. Rule 8 (b)(d), however Respondents filed a F.R.C.P. Rule 12(b)(6) motion, thereby admitting to the averments in Petitioner's complaint.

Petitioners responded to Respondents F.R.C.P. Rule 12(b)(6) motion and proceeded to clarify the issues raised through discovery pursuant to F.R.C.P. Rule 26 - 37. All discovery was stayed by the district judge in violation of the Federal Rules of Civil Procedure and its uniform local rule 26.1(10). Respondents, with exception of Dorothy Colom, never responded to discovery, Colom filed to stay discovery.

The district judge, with motions pending regarding discovery issues, abruptly dismissed the case relying on immunity and failure to state a claim, and without due process closed the courts to petitioners and a timely filed petition to rehear was denied and the case was appealed to the Fifth Circuit Court of Appeals. The appellate court affirmed the district court's dismissal under different grounds, lack of subject matter jurisdiction (Rooker-Feldman Doctrine) and upheld the closing of the courts to Petitioners to petition their government for a redress of grievance done to them. A timely filed petition to rehear was denied by the appellate court 25 August 2000.

REASON FOR GRANTING THE PETITION FOR A WRIT OF CERTIORARI

A. SUMMARY OF THE ARGUMENT

Petitioners enjoy Rights pursuant to the Constitution and remedies for violations of those rights. Among these are the ability to contract, religious rights, petition the government for a redress of grievance, due process and equal protection of the laws. Petitioners were denied all these guaranteed rights which are further secured under a congressional act 42 USC §1983.

B. ARGUMENT

Petitioner's filed a 42 USC §1983 complaint for violations of their constitutional rights which was based upon Respondent Dorothy Colom being absent all jurisdiction, issuing orders in a case which ad been appealed and perfected. A final order was issued by the trial Judge, Chancery Judge Timothy Erwin, **13 October 1998**, and was appealed **9 December 1998**, thereby transferring jurisdiction to the appellate court [reference to an order signed by Judge Dorothy Colom **18 November 1998** by U.S. District Judge Biggers in his memorandum opinion is false as no such order exists]. Without reason, without authority, without jurisdiction, Dorothy Colom, a judge, from outside the trial court district, appeared in this case on appeal, held hearings and issued orders in violation of Petitioner's secured Constitutional Rights under Article I Section 10 and the First and Fourteenth Amendments. Respondent Dorothy Colom specifically voided a

power of attorney, properly executed and recorded, between father and son, the power of attorney was specifically for health care and business affairs, interfered with the religious beliefs and practices of father and son in regard to son's obligation to the father and denial of due process and equal protection of the law. We repeat Respondent Colom, a judge, issued orders in a case that a judge of jurisdiction had issued a final order on and while the case was on appeal. Damages resulted from the unlawful issuing of orders, by Respondent Colom, without jurisdiction in the case, and because of the illegal and unlawful orders Petitioner Harry W. Vinson was unable to give health care to his father resulting in his premature death and the confiscation of over $100,000.00 from father's estate, unaccounted for and undocumented. In argumento if Respondent Colom had jurisdiction, she could not have voided the contract - a power of attorney- between father and son, Hunt vs Rousmanier's, 8 Wheat 174; Hale vs Hinkle, 201 U.S. 43 (1906).

Petitioners filed a verified 42 USC §1983 complaint with documentation of the foregoing, Respondent Colom moved for stay of discovery along with a F.R.C.P. Rule 12(b)(6) motion (immunity) Respondent Benson moved for F.R.C.P. Rule 12(b)(6) motion (immunity) with other respondents filing F.R.C.P. 12(b)(6) motions. Averments in complaint were not answered pursuant to the rules of court.

Petitioner's moved for discovery to show Respondent Colom and Benson did not qualify for immunity in that Colom was absent all jurisdiction

for her over acts and that Benson could not claim governmental type immunity for acts in his private capacity of an unlawfully appointed conservator. Upon filing for discovery to prove the important elements, the district court stayed all discovery in violations of F.R.C.P. Rule 26 - 37 and Conley v Gibson, 355 U.S. 41. The remaining respondents did not respond to discovery which would have proven a cause of action. The federal district court abruptly dismissed all respondents prior to ruling on discovery motions, relying upon failure to state a claim, Colom - judicial immunity and Benson - quasi judicial immunity which violates the principles set forth by this court, Bell v Hood, 327 U.S. 678 and the federal district court judge falsely stated in his memorandum opinion of 25 August 2000 dismissing the case, that Respondent Colom signed a final order 18 November 1998 in that case. A petition for rehear was filed and denied and case was appealed to the Fifth Circuit Court of Appeals.

The Fifth Circuit Court of Appeals affirmed the judgment of the district court, with the false statement that Respondent Colom had issued a final order 18 November 1998, under alternative grounds stating it was without jurisdiction to hear the matter under the Rooker-Feldman Doctrine, which is not valid in that this case is a 42 USC §1983 cause of action, and not an attempt to appeal a state action to a federal court, as Petitioners' constitutional rights were violated and the Petitioners did not address the merits of the state court on appeal. A favorable decision in this matter would not affect the merits of the state action on appeal to the Mississippi Supreme

Court, therefore it cannot be said to be intertwined.

The appellate court further upheld the district court's order requiring Petitioners to obtain prior permission before filing a petition for redress of grievance into the federal district courts in any manner even though Petitioners pay the required filing fees and never applied for forma pauperis status, none were frivolous in that all have stated constitutional violations and none were brought in bad faith.

The courts have held that prior to disciple or disbarment of attorneys, they must be afforded fair notice and a meaningful opportunity to respond, Schware vs Board of Bar Exam, 355 U.S. 232, 238 and In Re: Ruffalo, 390 U.S. 544. If the attorney is entitled to notice and opportunity as a matter of the bar, the private litigant, not contracting with the bar is also entitled. If the attorney is entitled to due process, so is the sovereign individual litigant in his own person, to pass Constitutional muster of equal protection of the laws.

Stated briefly, the federal district court and the court of appeals have disregarded the Federal Rules of Civil Procedure, Congressional Acts, The Constitution of The United States and controlling U.S. Supreme Court case law, thereby denying Petitioners' due process and equal protection of the laws in the prosecution of Petitioners' Complaint. When jurist ignore the law, they not only attempt to harm we, the people, but they make a mockery of the law and by refusing their assent to the law for the appearance of a private

interest of others is obstructing the administration of justice.

CONCLUSION

For all the foregoing reasons, The Supreme Court of The United States, the court of last resort, should exercise its supervisory powers and authority under Article III Section 2 of the Constitution to secure all parties due process and equal protection of the law at trial and appellate levels and grant the review of Petitioner's writ of certiorari.

Respectfully submitted,
without prejudice,

Harry W. Vinson
Brad Vinson
P. O. Box 791
New Albany, MS 38652

in propria persona

November 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
MISSISSIPPI, EASTERN DIVISION

HARRY W. VINSON AND
BRAD VINSON PLAINTIFFS

vs. Civil Action No. 1:99CV098-B-D

DOROTHY COLOM, ET AL. DEFENDANTS

MEMORANDUM OPINION

This matter comes before the court upon the defendants' motion to dismiss. Upon due consideration of the parties' memoranda and exhibits, the court is ready to rule.

FACTS

On **November 18, 1998**, Chancery Court Judge Dorothy Colom entered a final decree in cause numbers 96-0078 and 96-1110, in the Chancery Court of Lee County, Mississippi. These actions concerned the appointment of a guardian for Woodrow and Kernith Vinson. The Plaintiffs were parties to these actions and timely perfected their appeal to the Mississippi Supreme Court on or about **December 9, 1998.**

On **February 2nd** and **3rd, 1999**, Judge Colom presided over a hearing in which Kernith Vinson, the mother of Harry Vinson and the grandmother of Brad Vinson, was seeking a temporary restraining order and preliminary injunction against Harry and Brad Vinson. The purpose of Mrs. Vinson's petition was to prohibit the plaintiffs from taking any action concerning Woodrow W. Vinson, the father of Harry Vinson

and grandfather of Brad Vinson. Fred M. Bush, jr. and Kay Trapp, both attorneys with the law firm of Phelps Dunbar, L.L.P. in Tupelo, Mississippi, represented Kernith Vinson in the matter. Upon Conclusion of the hearing, Judge Colom granted the preliminary injunction sought by Mrs. Vinson.

Subsequently, by order dated **March 19, 1999**, Judge Colom appointed William H. (Bill) Benson, the Chancery Court Clerk for Lee County, Mississippi, as conservator for Woodrow W. Vinson and Kernith Vinson.

On March 31, 1999 the plaintiffs filed this action against Judge Colom, Bill Benson, Phelps Dunbar, L.L.P., Fred M. Bush, jr., Kay Trapp, State Farm Fire Casualty Company and other unknown defendants, alleging violations of their "United States of America Constitutional Rights, and Civil Rights, and Title 42 §1983, Title 42 §1985(3)", seeking a temporary restraining order and damages in excess of $100,000,000.00 dollars.

LAW

The defendants' motion is brought pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In considering a motion under Rule 12(b)(6), the district court must accept all well-plead facts as true and view them in the light most favorable to the plaintiff. Baker v Putnalm 75 F.3d 190, 196 (5th Cir.1996). Dismissal is not appropriate unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Doe v Hillsboro Indep. Sch. Dist., 81 F.3d 1395, 1401-1402 (5th Cir. 1996).

1) JUDGE COLOM'S MOTION TO DISMISS Judicial immunity is a well established principle of American Jurisprudence. Brinkman v

Johnston, 793 F.2d 111, 112 (5th Cir. 1986); Stump v Sparkman, 435 U.S. 349, 362-64, 98 S.Ct. 1099, 1107-1109, 55 L. Ed. 2d 331 (1978). Judicial immunity may only be overcome if it can be shown that a judge's action was either not judicial in nature or that it was outside the judge's judicial capacity, or that a judicial action was taken absent jurisdiction. Stump v Spakman, 435 U.S. at 356-57; Forrester v White, 484 U.S. 219, 227-29, 108 S. Ct. 538, 98 L.Ed. 2d 555 (1988). The Court finds that Judge Colom's actions were at all times within the scope of her judicial duties and thus she is absolutely immune from suit.

2) State Farm Fire and Casualty Co. and Bill Benson's Motion to Dismiss State Farm Fire and Casualty Company is the surety for Bill Benson's bond in his capacity as Lee County Chancery Clerk. The plaintiffs' claims against State Farm Fire and Casualty Company arise solely from the actions of Mr. Benson. Mr. Benson filed his motion to dismiss in this action and it was thereafter joined by State Farm. Therefore, the Court will consider these two defendants motions to dismiss collectively.

State court clerks are entitled to quasi-judicial immunity for actions taken pursuant to their official position. Boston v Lafayette County, Mississippi, 744 F. Supp 746, 750 (N.D. Miss. 1990), aff'd 933 F.2d 1003 (5th Cir. 1991) ("quasi-judicial immunity shields lower officials, such as clerks who implement judicial orders.")' Johnson v Craft, 673 F. Supp. 191, 193 (S.D. Miss) ("Court clerks are immune from liability when performing official acts."). Bill Benson was appointed conservator for Woodrow and Kernith Vinson in his official capacity as Chancery Court Clerk of

Lee County and pursuant to Mississippi code Annotated, §93-13-21. The court finds that Bill Benson was at all times acting within his official capacity and therefore enjoys quasi-judicial immunity and is immune from suit. Further, the court finds that as Mr. Benson's actions were within the scope of his professional duties, thus the plaintiffs have failed to state a claim against the defendant State Farm Fire and Casualty Company.

3) PHELPS DEFENDANTS' MOTION TO DISMISS The plaintiffs contend that by means of the Lee County Chancery Court proceedings for appointment of conservator for Woodrow W. Vinson, the Phelps defendants willfully conspired with Judge Colom and/or Bill Benson "to extort, take, and defraud Plaintiffs of their personal, private and real property" under 42 U.S.C. §§1983 and 1985.

A Claims Under 42 U.S.C. §1983

Acts of private individuals may support an action for liability under 42 U.S.C. §1983 if the individuals are "willing participant[s] in a joint action with the state or its agents." Brinkman, 793 F. 2d at 112; Dennis v Sparks, 449 U.S. 24, 101 S. Ct. 183, 66L. Ed. 2d 185 (1980). "The elements of civil conspiracy are 1) an actual violation of a right protected under §1983 and 2) actions taken in concert by the defendants with specific intent to violate the aforementioned right." Kerr v Lyford, 171 F.3d 330,339 (5th Cir. 1999). Section 1983 claims require that the "claimant ... state specific facts, not merely conclusive allegations." Hale v Harney, 786 F.2d 688, 690 (5th Cir. 1986); Lynch v Cannatella, 810 F.2d 1363, 1369-70 (5th Cir. 1987); See also, Young v Biggers, 938 F.2d 565,

566 (5th Cir. 1991). Specific facts of the conspiracy must be plead with particularity, not simply alleged in broad, vague assertions. Lynch, 810 F.2d at 1370. Additionally, "a lengthy line of decision [in the 5th Circuit] ... holds that litigants may not obtain review of state court actions by filing complaints about those actions in lower federal courts cast in the form of civil rights suits." Hale, 786 F.2d 690-91; Brinkman, at 112; See also, Sawyer v Overton, 595 F.2d 252 (5th Cir. 1979; Kimball v The Florida Bar, 632 F.2d 1283 (5th Cir. 1980).

In the instant case, the plaintiffs have merely alleged in broad, vague language that the defendants "willfully participated in the plan and purpose of the conspiracy." They have failed to plead with particularity and specific facts of the alleged conspiracy, but rather generally state conclusory allegations. Such bald conclusions will not suffice. The court holds that the plaintiffs have failed to plead facts sufficient to state a claim of a conspiracy under 42 U.S.C. §1983.

B. Claims Under 42 U.S.C. §1985(3)

Allegations of specific facts of a conspiracy are necessary order to state a claim under 42 U.S.C. §1985(3). U.S. ex rel. Simmmons v Zibilich, 542 F.2d 259 (5th Cir. 1976). Furthermore, a plaintiff must allege racial or other class-based discrimination motivated said conspiracy. Mitchell v United Parcel Service, 21 F. Supp. 627, 630 (S.D. Miss. 1998); Green v State Bar of Texas, 27 F.3d 1083, 1088 (5th Cir. 1994). The plaintiffs have failed to allege any class-based animus for an conspiracy, and , as stated above, the plaintiffs' claims are insufficient to state a claim of conspiracy. Therefore, the

court finds that the plaintiffs have failed to state a claim under 42 U.S.C. §1985(3); and thus have failed to state a claim against the Phelps defendants.

CONCLUSION

For the forgoing reasons, the court finds that the motions to dismiss filed by defendants Dorothy Colom, William H. Benson, State Farm Fire and Casualty Company, Fred M. Bush, jr., Kay Trapp, and Phelps Dunbar, L.L.P. should be GRANTED.

The court further finds that although the plaintiffs are proceeding pro se, they either individually or on the behalf of third parties, have filed an overabundance of actions in this court. Given the lack of legal foundation and volume of cases filed by these individuals, the court holds that neither Harry W. Vinson or Brad Vinson may file, on their on behalf, for any other individual, on their behalf by any third party individual who is not a licensed attorney, or otherwise, any action in the United States District Court for the Northern District of Mississippi without prior permission of the court.

An order will issue accordingly.

THIS, the 6 day of October 1999.

s/s

Neal B. Biggers, Jr.
Chief Judge

file date: October 8, 1999

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 99-60826
Summary Calendar

HARRY W. VINSON: BRAD VINSON
Plaintiffs-Appellants

v.

DOROTHY COLOM: WILLIAM (BILL) BENSON, his agents and assigns and his insurance carrier; State Farm Fire and Casualty Co.; FRED M. BUSH, JR., his agents and assigns and his insurance carrier to be named after discovery; KAY TRAPP, her agents and assigns and her insurance carrier to be named after discovery; PHELPS DUNBAR LLP LAW FIRM, their agents and assigns and their insurance carrier to be named after discovery.
Defendants- Appellees.

Appeal from the United States District Court for the Northern District of Mississippi
USDC No. 1:99-CV-98-B-D

Before JOLLY, HIGGINBOTHAM, and EMILIO M. GARZA, Circuit Judges

PER CURIAM:

The plaintiffs appeal the district court's Fed.R.Civ.P. 12(b)(6) dismissal of their civil rights complaint pursuant to 42 U.S.C. §§1983 and 1985(3), as well as the district court's order requiring them to obtain prior permission before filing any other action n the district court. The

plaintiff's complaint alleged that the defendants conspired to deprive them of various constitutional rights by having Mississippi Chancery Court Judge Dorothy Colom appoint William Benson as conservator of Woodrow W. Vinson.

"Federal courts, both trial and appellate, have a continuing obligation to examine the basis for their subject-matter jurisdiction." MCG, Inc. v Great W. Energy Corp., 896 F.2d 170, 173 (5th Cir. 1990). "The issue may be raised by parties, or by the court sua sponte, at any time." Id.

Federal district courts lack jurisdiction to engage in appellate review of state court judgments. See District of Columbia Court of Appeals v Feldman, 460 U.S. 462, 482 (1983); Rooker v Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). The constitutional issues presented in the plaintiffs' action are inextricably intertwined with the Chancery Court's order appointing Benson as Vinson's conservator. Accordingly, the plaintiffs' action constituted a request that the district court review a state court decision. See United States v Shepherd, 23 F. 3d 923, 924 (5th Cir. 1994). The district court's dismissal of the plaintiffs' complaint is therefore affirmed on the ground of lack of subject matter jurisdiction. See sojourner T v Edwards, 974 F.2d 27, 30 (5th Cir. 1992) (court of appeals may affirm district court's judgment on any basis supported by the record).

The district court did not abuse its discretion in , requiring the plaintiffs to obtain prior permission before filing an action in the district court. Gelabert v Lynaugh, 894 F.2d 746, 747-48 (1990). A district court may enjoin future filings in order to protect its jurisdiction and control its

docket. Farguson v MBank Houston, N.A., 808 F.2d 358, 360 (5th Cir. 1986). Pro se litigants are not immune from the imposition of sanctions if they "harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets." Id. at 359.

This is the plaintiffs' second appeal from a district court dismissal of claims challenging an order issued in Mississippi Chancery Court Cause No. 96-0078/96-1110. See Vinson v Colom, No. 99-60825 (5th Cir. June 16, 2000) (unpublished). The plaintiffs are warned that it is within this court's power under Fed.R.App.P. to impose sanctions upon parties who take frivolous appeals. See Vinson v Heckmann, 940 F.2d. 114,116 (5th Cir. 1991).

The plaintiffs are also warned that it is inappropriate to include derogatory personal comments about a district judge in documents filed with this court. Such comments, even by pro se plaintiffs, invite the striking of the documents in which they are contained. See Theriault v Silber, 574 F.2d 197 (5th Cir. 1978).

Affirmed; Sanctions Warnings Issued

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 99-60826

HARRY W. VINSON: BRAD VINSON
Plaintiffs-Appellants

v.

DOROTHY COLOM: WILLIAM (BILL) BENSON, his agents and assigns and his insurance carrier; State Farm Fire and Casualty Co.; FRED M. BUSH, JR., his agents and assigns and his insurance carrier to be named after discovery; KAY TRAPP, her agents and assigns and her insurance carrier to be named after discovery; PHELPS DUNBAR LLP LAW FIRM, their agents and assigns and their insurance carrier to be named after discovery.
Defendants- Appellees.

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Appeal from the United States District Court for the Northern District of Mississippi, Aberdeen

- - - - - - - - - -

Before JOLLY, HIGGINBOTHAM, and EMILIO M. GARZA, Circuit Judges

PER CURIAM:

IT IS ORDERED that the petition for rehearing be DENIED.

ENTREATED FOR THE COURT:

/s/ E. Grady Jolly

United States Circuit Judge

file date: August 25, 2000